A

GOLDEN HOPE PLANTATIONS (PENINSULAR) SDN BHD (LADANG SUNGEI SENARUT)

v.

SARASWATHY KATHAN

B

COURT OF APPEAL, PUTRAJAYA
LOW HOP BING JCA
ABU SAMAH NORDIN JCA
SULAIMAN DAUD JCA
C [CIVIL APPEAL NO: J-02-794-2002]
26 SEPTEMBER 2008

CIVIL PROCEDURE: *Appeal - Appeal to Court of Appeal - Value of subject matter of claim below RM250,000 - Matter under appeal*
D *immensely important and with far-reaching consequences - Whether Court of Appeal ought to grant leave to appellant to appeal*

LABOUR LAW: *Employment - Disablement benefits - Whether temporarily disabled employee entitled to receive disablement benefits under*
E *Employees' Social Security Act 1969 - Whether temporarily disabled employee receiving disablement benefits under the Employees' Social Security Act 1969 entitled to be paid for untaken annual leave - Employees' Social Security Act 1969, s. 44*

LABOUR LAW: *Employment - Employees - Employee under temporary*
F *disablement - Whether employer prohibited from taking action against employee during employee's period of temporary disablement - Whether temporary disablement constituted a break in service - Employees' Social Security Act 1969, s. 53*

G ***LABOUR LAW:*** *Employment - Employees - Rights of - Whether rights of employees safeguarded by Employment Act 1955 - Whether Employment Act 1955 allows incorporation of terms more favourable to employees in collective agreements than those terms prescribed under the Employment Act 1955 - Whether employee receiving benefits under the*
H *Employees' Social Security Act 1969 also entitled to receive benefits under the Employment Act 1955 or under contract of employment*

EQUITY: *Estoppel - Estoppel by conduct - Employer initially paying temporarily disabled employee for untaken annual leave - Employer*
I *subsequently refusing to pay employee for following year's untaken annual leave - Whether employer ought to be estopped from denying employee such payment*

The respondent was employed as a rubber tapper in the appellant's estate. The respondent's terms and conditions of service were governed by the Employment Act 1955 and by a collective agreement entered into between the Malayan Agricultural Producers Association (MAPA) and the National Union of Plantation Workers (NUPW). The respondent was injured in an accident at work sometime in 1998 and could not work thereafter. She was also unable to work a single day throughout 1999. The respondent received disablement benefits under the Employees' Social Security Act 1969 (SOCSO) for the period of disablement in 1998 and for the whole of 1999. During her period of disablement in 1998 – when the respondent was receiving SOCSO benefits – the appellant paid her proportionate annual leave for 12 days. However, the appellant refused to pay the respondent for her untaken annual leave in 1999. In the labour office, the respondent obtained an award of RM250.08 representing payment for 16 days of untaken annual leave, plus interest. The appellant's appeal to the High Court was dismissed and the appellant obtained leave to appeal to the Court of Appeal. The issue for the Court's consideration was whether an employee receiving benefits under SOCSO was also entitled to receive benefits under the Employment Act 1955 or under the employee's contract of employment. The appellant's case was that an employee was not entitled to receive both paid annual leave and temporary disablement benefits, purportedly under s. 44 of the Employees' Social Security Act 1969.

Held (dismissing the appeal with costs)
Per Low Hop Bing JCA delivering the judgment of the court:

(1) The matter was ordinarily non-appealable in view of the value of the subject matter – RM250.08. However, since the decision of the High Court was immensely important and had far-reaching consequences, the Court of Appeal would grant leave to the appellant to appeal. (para 3)

(2) The provisions under s. 44 of the Employees' Social Security Act 1969 are clear, unambiguous and self-evident. If on a particular day, an employee works and receives wages, the employee is not entitled to claim disablement benefits for that particular day. In the instant appeal, the respondent was under temporary disablement and had not worked a single day at all (after the work accident). Section 44 made no mention

of any claim for payment *in lieu* of annual leave, which was the crux of the instant appeal. Section 44 was thus inapplicable in the instant appeal. The High Court did not err in rejecting the appellant's argument on s. 44. (para 22)

(3) Section 53 of the Employees' Social Security Act 1969 expressly prohibits an employer from acting or taking any action against an employee during the employee's period of temporary disablement. Temporary disablement cannot be construed as a break in service. In the instant appeal, s. 53 gave effect to the respondent's continuous service under s. 60E(1), (1A), (1B), and (2) of the Employment Act 1955 and beneficiently conferred upon the respondent the entitlement to paid annual leave for 1999. (para 24)

(4) Being a beneficient social legislation, the Employment Act 1955 goes the extra mile to safeguard the rights of employees. Thus the Employment Act 1955 *inter alia* allows the incorporation of terms or conditions of service more favourable to an employee in a collective agreement than under the Employment Act 1955. In the instant appeal, art. 20 of the collective agreement clearly provided for the respondent's annual leave in more favourable terms than those prescribed under s. 60E of the Employment Act 1955. (paras 31, 32, 33 & 34)

(5) The appellant paid the respondent for 12 days' of proportionate annual leave in 1998. Such payment constituted a representation to the employee who was so influenced by the payment that it would be unconscionable or inequitable for the appellant – as employer and representor – to enforce its strict legal rights. The appellant ought to be estopped from denying the respondent's entitlement to paid annual leave for the year 1999. (paras 35 & 37)

Bahasa Malaysia *Translation Of Headnotes*

Responden bekerja sebagai penoreh getah di ladang getah perayu. Terma dan syarat perkhidmatan responden adalah dikawalselia oleh Akta Pekerjaan 1955 serta perjanjian bersama yang dimeterai di antara Malayan Agricultural Producers Association (MAPA) dan National Union of Plantation Workers (NUPW). Pada tahun 1998 responden mengalami kecederaan dalam satu kemalangan di tempat kerja yang menyebabkan responden hilang upaya untuk bekerja. Pada tahun 1999 beliau tidak mampu bekerja walaupun sehari.

Responden telah menerima faedah-faedah hilang upaya di bawah Akta Keselamatan Sosial Pekerja 1969 (SOCSO) bagi tempoh hilang upaya beliau pada tahun 1998 dan bagi keseluruhan tahun 1999. Dalam tempoh hilang upaya bagi tahun 1998 – sewaktu responden sedang menerima manfaat-manfaat SOCSO – perayu juga telah membayar kepada responden kadar cuti tahunannya untuk tempoh 12 hari. Perayu bagaimanapun enggan membayar responden kadar cuti tahunannya yang tidak diambil bagi tahun 1999. Di hadapan Jabatan Buruh, responden memperoleh award sebanyak RM250.08, iaitu bayaran bagi 16 hari cuti tahunan yang tidak diambil, beserta dengan bunganya. Rayuan perayu ke Mahkamah Tinggi telah ditolak dan perayu memperoleh kebenaran untuk merayu ke Mahkamah Rayuan. Isu yang perlu diputuskan oleh mahkamah adalah sama ada seseorang pekerja yang menerima faedah di bawah SOCSO juga berhak untuk menerima faedah-faedah di bawah Akta Pekerjaan 1955 atau di bawah kontrak pekerjaan pekerja tersebut. Kes perayu adalah bahawa seorang pekerja tidak berhak untuk menerima kedua-dua gaji cuti tahunan dan faedah hilang upaya sementara, di bawah s. 44 Akta Keselamatan Sosial Pekerja 1969.

Diputuskan (menolak rayuan dengan kos)
Oleh Low Hop Bing HMR menyampaikan penghakiman mahkamah:

(1) Halperkara pada kebiasaannya tidak boleh dirayui mengambilkira bahawa nilainya hanyalah RM250.08. Bagaimanapun, oleh kerana keputusan Mahkamah Tinggi adalah begitu penting dan akan menimbulkan kesan yang berbagai dan mendalam, maka Mahkamah Rayuan sedia memberikan kebenaran kepada perayu untuk merayu.

(2) Peruntukan di bawah s. 44 Akta Keselamatan Sosial Pekerja 1969 adalah jelas dan tidak kabur. Jika pada satu-satu hari tertentu, seorang pekerja bekerja dan menerima gajinya, maka pekerja tersebut tidak berhak untuk menuntut faedah hilang upaya untuk hari tersebut. Dalam rayuan semasa, responden berada dalam ketidakupayaan sementara dan tidak bekerja walaupun sehari (selepas kemalangan di tempat kerja). Seksyen 44 tidak menyebut apa-apa mengenai tuntutan pembayaran sebagai ganti cuti tahunan, yang menjadi asas rayuan di sini. Seksyen 44 dengan itu tidak terpakai kepada rayuan semasa. Maka Mahkamah Tinggi tidak khilaf dalam menolak hujah perayu berkaitan s. 44.

A **(3)** Seksyen 53 Akta Keselamatan Sosial Pekerja 1969 secara ekspres melarang majikan dari bertindak atau mengambil sebarang tindakan terhadap seorang pekerja dalam tempoh pekerja tersebut mengalami ketidakupayaan sementara. Ketidakupayaan sementara tidak boleh dianggap sebagai
B penyelang kepada perkhidmatan. Dalam rayuan semasa, s. 53 memberi kesan kepada perkhidmatan berterusan responden di bawah s. 60E(1), (1A), (1B), dan (2) Akta Pekerjaan 1955 dan menganugerahkan kepada responden hak untuk dibayar cuti tahunan berbayar bagi tahun 1999.

C

(4) Sebagai satu perundangan penuh kebajikan Akta Pekerjaan 1955 melangkah lebih jauh dalam mempertahankan hak-hak pekerja. Maka Akta Pekerjaan 1955 antara lain telah membenarkan pemeteraian terma-terma atau syarat-syarat
D perkhidmatan yang lebih bermanfaat kepada perkaja di bawah perjanjian bersama berbanding di bawah Akta Pekerjaan 1955. Dalam rayuan semasa, art. 20 perjanjian bersama jelas memperuntukkan cuti tahunan responden dengan terma-terma yang lebih bermanfaat berbanding yang diperuntukkan di
E bawah s. 60E Akta Pekerjaan 1955.

(5) Perayu telah membayar responden kadar 12 hari cuti tahunan bagi tahun 1998. Pembayaran tersebut merupakan representasi kepada pekerja dan jelas amat mempengaruhinya sehinggakan menjadi sesuatu yang tidak berakal budi atau tidak berekuiti
F bagi perayu – selaku majikan dan pemberi representasi – untuk menguatkuasakan hak undang-undang secara ketat. Perayu harus diestop dari menafikan keberhakan responden untuk dibayar cuti tahunan berbayar bagi tahun 1999.

G **Case(s) referred to:**

Sundaram v. Veemah & Ors [1972] 1 MLJ 83 ***(refd)***

Barat Estates Sdn Bhd & Anor v. Parawakan Subramaniam & Ors [2000] 4 MLJ 107 ***(refd)***

Balan v. National Electricity Board Employees Union [1975] 1 MLJ 91
H ***(refd)***

Boustead Trading (1985) Sdn Bhd v. Arab-Malaysian Merchant Bank Bhd [1995] 4 CLJ 283 FC ***(refd)***

Hoh Kiang Ngan v. Mahkamah Perusahaan Malaysia & Anor [1996] 4 CLJ 687 FC ***(refd)***

Kesatuan Kebangsaan Pekerja-Pekerja Perusahaan Petroleum dan Kimia v.
I *Castrol (M) Sdn Bhd [1997] 2 MLJ 854* ***(refd)***

Stock v. Frank Jones (Tipton) Ltd [1978] 1 WLR 231 ***(refd)***

Workmen of Indian Standards Institution v. Management of Indian Standards Institution [1976] 1 LLJ 36 ***(refd)***

Legislation referred to:
Courts of Judicature Act 1964, s. 68(1)(a)
Employees' Social Security Act 1969, ss. 44, 53
Employment Act 1955, ss. 60E(1), (1A), (1B), (2)
Interpretation Acts 1948 and 1967, s. 17A

For the appellant - A Ramadass (Jothiletchmy with him); M/s Ramadas & Assoc
For the respondent - Ragunath Kesavan; M/s Kesavan

[Appeal from High Court, Muar; Civil Appeal No: 16-3-2000]

Reported by Andrew Christopher Simon

JUDGMENT

Low Hop Bing JCA:

Appeal

[1] The subject matter of this appeal arose from the decision of the Segamat labour officer, ordering Golden Hope Plantations (Peninsular) Sdn Bhd ("the employer") to pay the respondent ("the employee") a sum of RM250.08 *in lieu* of the 16-day annual leave.

[2] The Muar High Court has, on the employer's appeal, affirmed the decision of the labour officer.

[3] The value of the subject matter ie RM250.08 renders it ordinarily non-appealable, in view of s. 68(1)(a) of the Courts of Judicature Act 1964. However, the decision of the High Court is of immense importance and has far-reaching consequences. The effect is pervasive; it concerns myriads of members of the Malayan Agricultural Producers Association (MAPA) as well as the National Union of Plantation Workers (NUPW). Hence, by way of an exception to s. 68(1)(a), this court has granted leave to the employer to lodge the instant appeal.

Factual Background

[4] The factual background is not disputed and is simple and straightforward.

[5] The employer is a member of MAPA. The employee's terms and conditions of employment were governed by the Employment Act 1955 and the collective agreement entered into between MAPA and NUPW at the material time ("the collective agreement").

[6] The employee was employed as a rubber tapper in the employer's estate, Ladang Sungei Senarut. Due to an accident suffered at work, she had not worked a single day for the whole year of 1999 ("year 1999"). She received temporary disablement benefits under the Employees' Social Security Act 1969 ("the SOCSO Act") for year 1999.

[7] For the period of temporary disablement arising from employment injury in1998, during which the employee was receiving disablement benefits, the employer had in fact effected payment to the employee proportionate paid annual leave for 12 days.

[8] Be that as it may, for year 1999, the employer refused to make any payment therefor.

[9] The employee then filed a complaint against the employer at the Segamat labour office, claiming RM250.08 *in lieu* of the 16 day annual leave for year 1999.

[10] The labour officer who heard the employee's complaint handed down his decision on 15 March 2000, ordering the employer to pay that sum to the employee and, as penalty for late payment, interest at 8% per annum from 14 April 2000 to the date of realisation.

[11] The employer then appealed to the Muar High Court against the labour officer's decision.

[12] On 1 February 2002, the Muar High Court dismissed the employer's appeal with costs.

[13] The instant appeal by the employer seeks an answer to the following question of law:

> Whether an employee who is covered by the Employees' Social Security Act 1969 and who is receiving benefits for a whole year under that Act for employment injury is also entitled to receive benefits under the Employment Act 1955 or under the employee's contract of employment with the employer?

Double Benefits

[14] The thrust of the submission by learned counsel Mr. A Ramadass, assisted by Miss Jothiletchmy, for the employer is that the employee is not entitled to receive double benefits *viz* paid annual leave and temporary disablement benefits. They sought support from, *inter alia*, s. 44 of the SOCSO Act.

[15] On the other hand, learned counsel Mr. Ragunath Kesavan contended for the employee that upon a proper construction of the social legislation expressed in the Employment Act 1955 and the SOCSO Act, the employee is entitled to the 16-day paid annual leave. He referred, *inter alia*, to:

(1) Section 60E(1), (1A); (1B) and (2) of the Employment Act 1955;

(2) Section 53 of the SOCSO Act;

(3) *Sundaram v. Veemah & Ors* [1972] 1 MLJ 83 HC;

(4) *Barat Estates Sdn Bhd & Anor v. Parawakan a/l Subramaniam & Ors* [2000] 4 MLJ 107 CA;

(5) *Balan v. National Electricity Board Employees Union* [1975] 1 MLJ 91 FC;

(6) *Boustead Trading (1985) Sdn Bhd v. Arab-Malaysian Merchant Bank Bhd* [1995] 4 CLJ 283 FC; and

(7) *Kesatuan Kebangsaan Pekerja-Pekerja Perusahaan Petroleum dan Kimia v. Castrol (M) Sdn Bhd* [1997] 2 MLJ 854 HC.

[16] The learned High Court judge rejected the employer's submission based on s. 44 of the SOCSO Act ("s. 44")and held that paid annual leave is an employment benefit mandated by s. 60E(1), (1A), (1B) and (2) of the Employment Act 1955 ("s. 60E(1), (1A), (1B) and (2)") read with art. 20 of the collective agreement ("art. 20").

Social Legislation

[17] The question for determination in the instant appeal calls for an examination and interpretation of the Employment Act 1955 and the SOCSO Act. Both these Acts come within the category of social legislation.

[18] In *Sundaram, supra*, Wan Suleiman J (later SCJ) at p. 84 noted that the Employment Ordinance (now Act) 1955 is a public Act passed in favour of the workers to compel their employers to do certain things for their protection and benefit.

[19] In *Barat Estates Sdn Bhd, supra,* at p. 115 Gopal Sri Ram JCA:

(1) observed that the Employment Act 1955 contains provisions that are designed to afford protection to an employee under a contract of service and is designed to afford a degree of security of tenure that is not available to a servant at common law. The Act is a piece of beneficent social legislation; its provisions must, in accordance with well-settled principles, receive a broad and liberal interpretation that enhances its avowed object. It is what Lord Simon in *Stock v. Frank Jones (Tipton) Ltd* [1978] 1 WLR 231, 236 referred to as "functional construction of a statute;

(2) referred to *Hoh Kiang Ngan v. Mahkamah Perusahaan Malaysia & Anor* [1996] 4 CLJ 687 FC, where the Federal Court considered another piece of beneficent social legislation, the Industrial Relations Act 1967, and applied the dictum of Bhagwati J in *Workmen of Indian Standards Institution v. Management of Indian Standards Institution* [1976] 1 LLJ 36 at p. 43 to the effect that in interpreting this type of legislation, we must place such an interpretation as would advance the object and purpose of the legislation and give full meaning and effect to it in order to achieve its avowed social objective; and

(3) applied s. 17A of the Interpretation Acts 1948 and 1967, requiring the adoption of a purposive approach to the construction of statutes, in the following words:

> In the interpretation of a provision of an Act, a construction that would promote the purpose or object underlying the Act (whether that purpose or object is expressly stated in the Act or not) shall be preferred to a construction that would not promote that purpose or object.

[20] In the circumstances, I shall embark upon the interpretation of the social legislation enacted in the Employment Act 1955 and the SOCSO Act in the light of the above trite principles.

[21] First, s. 44 relied on by the employer reads as follows: A

44. Person not entitled to receive benefits in certain cases

No person shall be entitled to disablement benefit for temporary disablement in respect of any day on which he works and receives wages. B

[22] The provisions housed in s. 44 are clear, unambiguous and self-evident in that if, on a particular day, the employee works and receives full wages therefor, then the employee is disentitled from claiming any disablement benefit for that particular day. In other C words, when an employee works and receives wages for a particular working day, there is no question of an entitlement to disablement benefit. Section 44 contemplates the situation of an employee working on a particular day on which he or she is able-bodied and so is not suffering from any "temporary disablement". D However, in the instant appeal, the uncontroverted facts unfolded above show that for year 1999, the employee was under temporary disablement and had not worked a single day at all. Further, s. 44 makes no mention of any claim for payment *in lieu* of annual leave, which is the crux of the instant appeal. In my E view, s. 44 is inapplicable to the undisputed facts in the instant appeal. The learned judge has occasioned no error in rejecting the employer's reliance on s. 44.

[23] Quite apart from s. 44, s. 53 of the same Act ("s. 53") is F unsupportive of the employer's contention. Section 53 merits reproduction as follows:

53. Employer not to dismiss or punish employee during period of temporary disablement

G

(1) No employer shall, except as provided under the regulations, dismiss, discharge, or reduce or otherwise punish an employee during the period he is in receipt of disablement benefit for temporary disablement.

(2) No notice of dismissal or discharge or reduction given to H an employee during the period specified in subsection (1) shall be valid or operative.

[24] Section 53 contains express prohibitions against the employer from acting or taking any action against the employer during the period of the latter's temporary disablement. The employee's I

temporary disablement and the receipt by the employee of the disablement benefit under s. 53 do not *ipso facto* entitle the employer to dismiss, discharge, or reduce or otherwise punish the employee during the period of temporary disablement which in the instant appeal is year 1999. Hence, the temporary disablement cannot be construed as a break in service. On the contrary, s. 53 clearly gives effect to the employee's continuous service under s. 60E(1), (1A), (1B) and (2) of the Employment Act 1955; and beneficently confers on the employee the entitlement to paid annual leave for year 1999.

[25] The law regulating the employee's annual leave is to be found in s. 60E(1), (1A), (1B) and (2).

Annual Leave Under s. 60E(1), (1A), (1B) And (2)

[26] Section 60E contains express mandatory provisions conferring on the employee the entitlement to paid annual leave. The relevant provisions are:

60E. Annual Leave

(1) An employee shall be entitled to paid annual leave of:

(a) Eight days for every twelve months of continuous service with the same employer if he has been employed by that employer for a period of less than two years;

(b) twelve days for every twelve months of continuous service with the same employer if he has been employed by that employer for a period of two years or more but less than five years; and

(c) sixteen days for every twelve months of continuous service with the same employer if he has been employed by that employer for a period of five years or more.

(1A) The paid annual leave to which an employer is entitled under subsection (1) shall be in addition to rest days and paid holidays.

(1B) Where an employee who is on paid annual leave becomes entitled to sick leave or maternity leave while on such annual leave, the employee shall be granted the sick leave or the maternity leave, as the case may be, and the annual leave shall be deemed to have not been taken in respect of the days for which sick leave or maternity leave is so granted.

(2) The employer shall grant and the employee shall take such leave not later than twelve months after the end of every twelve months continuous service and any employee who fails to take such leave at the end of such period shall thereupon cease to be entitled thereto:

> Provided that an employee shall be entitled to payment *in lieu* of such annual leave if, at the request of his employer, he agrees in writing not to avail himself of any or all of his annual leave entitlement.

[27] By way of analysis, s. 60E(1) sets out the employee's entitlement to annual leave for every twelve months of continuous service with the same employer according to the duration of the employment, eg,

Entitlement	Duration of Employment
(a) Eight days	Less than two years
(b) 12 days	Two years or more but less than five years
(c) 16 days	Five years or more (It is not disputed that the employee comes within this category)

[28] Section 60E(1A) says that the employee's entitlement to the annual leave under s. 60E(1)(c) in the instant appeal shall be in addition to rest days and paid holidays.

[29] Section 60E(1B) provides for paid annual leave as an addition to and not a derogation from the sick leave or maternity leave.

[30] Section 60E(2) requires the employer to grant and the employee to take the annual leave not later than 12 months after the end of every twelve months continuous service, and any employee who fails to take such leave at the end of such period, shall thereupon forfeit the entitlement, but the proviso thereto entitles the employee to payment *in lieu* of annual leave if, at the request of the employer, the employee agrees in writing not to avail himself of any or all of his annual leave entitlement.

[31] Being a beneficent social legislation, the Employment Act 1955 takes the extra mile to specifically safeguard the rights of the employees. By way of illustration:

(1) Section 7 thereof renders void any term and condition in a contract of service that is less favourable than that prescribed under the Act (see *Barat Estates, supra*; and *Kesatuan Kebangsaan Pekerja-Pekerja Perusahaan Petroleum dan Kimia, supra*);

(2) Section 7A allows the employee and the employer to include in an agreement any term or condition of service such as a collective agreement which is more favourable to the employee and such term or condition shall be valid; and

(3) Section 7B removes any doubt and permits the inclusion of any matter in a contract of service which is not provided by or under the Act, so that a contract of service is not necessarily confined to the terms and conditions contained in the Act.

[32] The collective agreement expressly provided in s. 7A is put into practice in the collective agreement in the instant appeal. The material clause is art. 20.

Article 20

[33] Article 20 provides for the employee's entitlement to paid annual leave in the following words:

Article 20 – Annual Leave

(a) Subject to the provisions of the Employment Act 1955, all employees shall be entitled to paid annual leave of:

(i) 14 days per annum if the employee has been employed for a period of less than 5 years; and

(ii) 16 days per annum if the employee has been employed for a period of 5 years or more.

(b) An employee shall be entitled to payment *in lieu* of such annual leave if, at the request of the employer or voluntarily, he agrees not to avail himself of any or all of annual leave entitlement.

[34] It is abundantly clear to me that art.20 provides for terms and conditions pertaining to annual leave in more favourable terms than those housed in s. 60E above. By way of elaboration:

(1) Article 20(a)(i) provides for the employee's entitlement to paid annual leave of 14 days if the employee has been employed for a period of less than five years;

(2) Article 20(b) signifies the employee's right to elect payment *in lieu* of annual leave; it further states that an employee who agrees not to avail himself of any or all of his annual leave entitlement need not necessarily do so in writing.

Estoppel

[35] As alluded to above, for 1998, although the employee had not worked in 25 April 1998, the employer had in fact effected payment for the employee's proportionate annual leave of 12 days. However, for year 1999, the employer had refused to do so. The circumstances of the case would attract the application of the doctrine of estoppel.

[36] In *Boustead Trading, supra,* the appellant bought goods on credit from Chemitrade Sdn Bhd ("Chemitrade"). Chemitrade then entered into a factoring agreement with the respondent under which the book debts owed by the appellant to Chemitrade were assigned to the respondent. Notice of the assignment was given to the respondent. Chemitrade gave the respondent copies of the invoices in respect of each sale and delivery of goods to the appellant. The respondent then stamped the invoices with the indorsement that any objection was to be reported to the respondent within 14 days of its receipt ("the indorsement") and sent them to the appellant. The appellant did not complain about any of the invoices within 14-day period, nor challenge the respondent's right to impose the 14-day period by way of the indorsement. The appellant paid the respondent on several of the invoices but later refused to make payment on 20 invoices ("the invoices"). The appellant argued that nothing was payable on the invoices due to a statement on the appellant's purchase orders that the amounts stated were to be offset against the cost of stocks returned to Chemitrade ("the statement"). The respondent denied knowledge of the statement and argued that since the appellant had not protested about the validity of the indorsement, it was entitled to assume the appellant had accepted it. The trial judge found for the respondent. The appellant appealed to the Federal Court on the ground, *inter alia*, that the respondent, as

assignee, could not unilaterally impose the 14-day limit, and that the agreement was not a valid assignment. The Federal Court dismissed, *inter alia*, the appellant's argument and held that:

(1) A reasonable man in the respondent's position would be entitled to assume that the appellant had agreed to the imposition of the 14-day period as it did not merely remain silent by not objecting to it but had in fact made payment on some invoices. The appellant should not be allowed to question the validity of the indorsement after seven months as it would be unconscionable or inequitable for it to do so; and

(2) The doctrine of estoppel is a flexible principle by which justice is done according to the circumstances. It is a doctrine of wide utility and has been resorted to in varying fact patterns to achieve justice. The maxim, 'estoppel may be used as a shield but not a sword' does not limit the doctrine of estoppel to defendants alone. Plaintiffs too may have recourse to it. Estoppel may assist a plaintiff in enforcing a cause of action by preventing a defendant from denying the existence of some fact which would destroy the cause of action.

[37] In the instant appeal, the payment by the employer of the annual leave to the employee for the relevant period of 1998 constitutes a representation to the employee who was so influenced by the payment that it would be unconscionable or inequitable for the employer as representor to enforce its strict legal rights. In other words, the employer is estopped from denying the employee's entitlement to paid annual leave for year 1999.

Conclusion

[38] On the foregoing grounds, I am unable to find any merit in the employer's appeal. The answer to the above question of law is in the affirmative. This appeal is dismissed with costs. The decision of the High Court is hereby affirmed. Deposit to the employee on account of taxed costs.

[39] My learned brothers Abu Samah bin Nordin and Sulaiman bin Daud, JJCA have read this judgment in draft and have agreed to make it the judgment of this court.